

(d) If the respondent fails to request a hearing or to file an appeal in writing within the time periods provided in paragraph (c) of this section, the Director's determination becomes final.

Subpart F—Hearings

§ 16.201 Notice and order of hearing.

(a) If a respondent is provided the opportunity for hearing in an initial determination and does not waive hearing, the Deputy Chief Counsel within 10 days after the respondent elects a hearing will issue and serve on the respondent and complainant a hearing order. The hearing order will set forth:

(1) The allegations in the complaint, or notice of investigation, and the chronology and results of the investigation preliminary to the hearing;

(2) The relevant statutory, judicial, regulatory, and other authorities;

(3) The issues to be decided;

(4) Such rules of procedure as may be necessary to supplement the provisions of this part;

(5) The name and address of the person designated as hearing officer, and the assignment of authority to the hearing officer to conduct the hearing in accordance with the procedures set forth in this part; and

(6) The date by which the hearing officer is directed to issue an initial decision.

(b) Where there are no genuine issues of material fact requiring oral examination of witnesses, the hearing order may contain a direction to the hearing officer to conduct a hearing by submission of briefs and oral argument without the presentation of testimony or other evidence.

§ 16.202 Powers of a hearing officer.

In accordance with the rules of this subpart, a hearing officer may:

(a) Give notice of, and hold, pre-hearing conferences and hearings;

(b) Administer oaths and affirmations;

(c) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;

(d) Limit the frequency and extent of discovery;

(e) Rule on offers of proof;

(f) Receive relevant and material evidence;

(g) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;

(h) Hold conferences to settle or to simplify the issues by consent of the parties;

(i) Dispose of procedural motions and requests;

(j) Examine witnesses; and

(k) Make findings of fact and conclusions of law, and issue an initial decision.

§ 16.203 Appearances, parties, and rights of parties.

(a) *Appearances.* Any party may appear and be heard in person.

(1) Any party may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another duly authorized representative.

(2) An attorney, or other duly authorized representative, who represents a party shall file a notice of appearance in accordance with § 16.13.

(b) *Parties and agency participation.*

(1) The parties to the hearing are the respondent (s) named in the hearing order, the complainant(s), and the agency.

(2) Unless otherwise specified in the hearing order, the agency attorney will serve as prosecutor for the agency from the date of issuance of the Director's determination providing an opportunity for hearing.

§ 16.207 Intervention and other participation.

(a) A person may submit a motion for leave to intervene as a party. Except for good cause shown, a motion for leave to intervene shall be submitted not later than 10 days after the notice of hearing and hearing order.

(b) If the hearing officer finds that intervention will not unduly broaden the issues or delay the proceedings and, if the person has a property or financial interest that may not be addressed

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adequately by the parties, the hearing officer may grant a motion for leave to intervene. The hearing officer may determine the extent to which an intervenor may participate in the proceedings.

(c) Other persons may petition the hearing officer for leave to participate in the hearing. Participation is limited to the filing of post-hearing briefs and reply to the hearing officer and the Associate Administrator. Such briefs shall be filed and served on all parties in the same manner as the parties' post hearing briefs are filed.

(d) Participation under this section is at the discretion of the FAA, and no decision permitting participation shall be deemed to constitute an expression by the FAA that the participant has such a substantial interest in the proceeding as would entitle it to judicial review of such decision.

§ 16.209 Extension of time.

(a) *Extension by oral agreement.* The parties may agree to extend for a reasonable period of time for filing a document under this part. If the parties agree, the hearing officer shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the hearing officer to be signed by the hearing officer and filed with the hearing docket. The hearing officer may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) *Extension by motion.* A party shall file a written motion for an extension of time with the hearing officer not later than 7 days before the document is due unless good cause for the late filing is shown. A party filing a written motion for an extension of time shall serve a copy of the motion on each party.

(c) *Failure to rule.* If the hearing officer fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed denied.

(d) *Effect on time limits.* In a hearing required by section 519(b) of the Airport and Airways Improvement Act, as amended in 1987, 49 U.S.C. 47106(e) and 47111(d), the due date for the hearing officer's initial decision and for the

final agency decision are extended by the length of the extension granted by the hearing officer only if the hearing officer grants an extension of time as a result of an agreement by the parties as specified in paragraph (a) of this section or, if the hearing officer grants an extension of time as a result of the sponsor's failure to adhere to the hearing schedule. In any other hearing, an extension of time granted by the hearing officer for any reason extends the due date for the hearing officer's initial decision and for the final agency decision by the length of time of the hearing officer's decision.

§ 16.211 Prehearing conference.

(a) *Prehearing conference notice.* The hearing officer schedules a prehearing conference and serves a prehearing conference notice on the parties promptly after being designated as a hearing officer.

(1) The prehearing conference notice specifies the date, time, place, and manner (in person or by telephone) of the prehearing conference.

(2) The prehearing conference notice may direct the parties to exchange proposed witness lists, requests for evidence and the production of documents in the possession of another party, responses to interrogatories, admissions, proposed procedural schedules, and proposed stipulations before the date of the prehearing conference.

(b) *The prehearing conference.* The prehearing conference is conducted by telephone or in person, at the hearing officer's discretion. The prehearing conference addresses matters raised in the prehearing conference notice and such other matters as the hearing officer determines will assist in a prompt, full and fair hearing of the issues.

(c) *Prehearing conference report.* At the close of the prehearing conference, the hearing officer rules on any requests for evidence and the production of documents in the possession of other parties, responses to interrogatories, and admissions; on any requests for depositions; on any proposed stipulations; and on any pending applications for subpoenas as permitted by § 16.219. In addition, the hearing officer establishes the schedule, which shall provide for the issuance of an initial decision